

EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. 2:18cv530

CSX TRANSPORTATION, INC.,
individually and on behalf
of NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
et al.,

Defendants.

Remote Proceedings

January 13, 2021

9:38 a.m. - 6:40 p.m.

VIDEO DEPOSITION OF ROBERT GIRARDOT
(via Teleconference)

Taken before SUZANNE VITALE, R.P.R., F.P.R.
and Notary Public for the State of Florida at Large,
pursuant to Notice of Taking Deposition filed in the
above cause.

Job No. CS4395739

1 that provision, would you agree that
2 Norfolk Southern would be in its rights to seek to
3 have the NPBL uphold that portion of the operating
4 agreement?

5 MR. HATCH: I'm going to object with the
6 same set, and I'll add that it's been asked and
7 answered.

8 MR. WINGFIELD: The witness did not answer
9 the question, so I'm asking it again. So I'll
10 have to ask it a third time and see if I can
11 get an answer.

12 BY MR. WINGFIELD:

13 Q. Does CSX agree that NSR would be within
14 its rights to seek to uphold the agreement embodied
15 in the first sentence of the tenth paragraph of the
16 operating agreement?

17 MR. HATCH: I'm going to object. That is
18 a hypothetical question. It calls for a legal
19 conclusion. The witness is here to provide
20 factual testimony.

21 So with those objections, if you can
22 answer, Rob, please proceed.

23 THE WITNESS: Yes.

24 BY MR. WINGFIELD:

25 Q. Would CSX agree that the first sentence of

1 sentence of the business purpose section reads "Cars
2 are also interchanged with the Eastern Shore
3 Railroad and the Chesapeake and Albemarle Railroad."

4 Would you agree that the Belt Line, NPBL,
5 has customers in addition to CSX and NSR?

6 A. Based on this, yes.

7 Q. And this record indicates that those other
8 customers include Eastern Shore Railroad and
9 Chesapeake and Albemarle Railroad, right?

10 A. Yeah, that's correct.

11 Q. So is it your testimony --

12 MR. HATCH: Alan, I think he was still
13 speaking, if you don't mind.

14 THE WITNESS: I was just saying, with
15 respect to this, you know, what we're talking
16 about, I know with 100 percent certainty that
17 the Chesapeake and Albemarle Railroad doesn't
18 move any intermodal traffic.

19 BY MR. WINGFIELD:

20 Q. Pursuant to paragraph ninth of the
21 operating agreement and the first sentence in there
22 talking about the uniform rate, is it CSX's position
23 that NSR and CSX give themselves advantageous low
24 rates but charge higher rates to Eastern Shore
25 Railroad or the Chesapeake and Albemarle Railroad?

1 MR. HATCH: I'm going to object, calls for
2 a legal conclusion, hypothetical, compound and
3 irrelevant.

4 THE WITNESS: Let's take that piece by
5 piece again because it's been said that's a
6 compound question. It's complicated.

7 So can you break that down for me?

8 BY MR. WINGFIELD:

9 Q. Okay. CSX's own business record shows
10 that NPBL has customers in addition to CSX and NSR,
11 right?

12 A. No, that's not right.

13 Q. In what sense would the Eastern Shore
14 Railroad and Chesapeake and Albemarle Railroad not
15 be a customer of the Belt Line?

16 A. They're not a customer.

17 Q. Is CSX a customer?

18 A. CSX is an owner.

19 Q. In the context of Belt Line's operations,
20 who would you consider to be Belt Line's customers?

21 A. I would consider that to be somebody that
22 paid me to move traffic across my railroad.

23 Q. Would CSX pay the Belt Line for traffic
24 moved across the Belt Line?

25 A. Yes.

1 Q. So CSX would be a customer, right, under
2 your definition?

3 Would NS pay the Belt Line for traffic --
4 a Belt Line move for NS?

5 A. I think in both those cases, those would
6 be -- they would be customers and owners. So I
7 guess they'd be a special customer.

8 Q. When the NPBL moves traffic for the
9 Eastern Shore Railroad, would the Eastern Shore
10 Railroad pay NPBL for those services?

11 MR. HATCH: Object, assumes facts not in
12 evidence and hypothetical.

13 THE WITNESS: Yeah, I would say that in --
14 that they're not their customer.

15 BY MR. WINGFIELD:

16 Q. And why not?

17 A. Because, typically, in a situation like
18 this, the shipper pays the rate charges.

19 Q. Does the shipper pay the rate charges
20 directly to NPBL?

21 A. I don't have any way of knowing. That
22 would depend on what arrangement the shipper made.

23 Q. Is it CSX's position that the Belt Line
24 can give CSX and Norfolk Southern a special low rate
25 and not make it available to other shippers using

1 monitor is 3:02 p.m. We are back on the video
2 record. This is the start of Media Unit No. 4.

3 BY MR. WINGFIELD:

4 Q. Mr. Girardot, we're on Exhibit 14, which
5 is tab 16, Cannon Moss' e-mail, still.

6 In Mr. Moss' e-mail, the last bullet point
7 reads "NPBL management has reviewed the proposed
8 rate and would recommend to the board for a rate
9 committee to do a complete review of the tariff."

10 Do you see that?

11 A. Yes.

12 Q. Did CSXT understand it was being offered a
13 rate committee to consider the proposed rate if it
14 wanted?

15 A. No, I don't understand that bullet as
16 that, no.

17 Q. Okay. Did CSXT at any point say yes,
18 thank you, we would like the rate committee?

19 A. Not that I know of.

20 Q. So let's go back to the 2018 rate
21 proposal, Exhibit 12, tab 7.

22 A. Yes.

23 Q. I'm on page 2, the language we looked at
24 before, where CSXT, in this letter, stated
25 "Similarly, we believe the commercial sensitivity

1 although I welcome you to correct me on it, I
2 don't see where that's covered in the 30(b)(6)
3 topics.

4 MR. WINGFIELD: Well, I was just trying to
5 close a logical loop. The impression I get
6 from this witness is that it's CSXT's position
7 that this 2018 rate proposal could have been
8 completely finalized and resolved at the
9 management level, never approved by the board,
10 never approved by anybody else, including the
11 shareholders, that Cannon Moss could have acted
12 on his own as president to do a deal with CSX.

13 That's my understanding of his testimony.
14 I just want to make sure I absolutely
15 understand that is his testimony.

16 BY MR. WINGFIELD:

17 Q. Have I recited and summarized your
18 testimony correctly, Mr. Girardot?

19 A. Again, that's a long summary there, a lot
20 of parts, and --

21 Q. Okay. I'll break it down.

22 Is it your testimony that it's CSX's
23 position that Cannon Moss could have negotiated and
24 executed a definitive agreement with CSX based on
25 the 2018 rate proposal without having to get

1 approvals from anybody else?

2 A. That's my opinion, yes.

3 Q. That means the board -- you said
4 repeatedly the board would not need to act on it,
5 right, in your opinion?

6 A. I don't see anything in there that -- at
7 variance with the 1897 agreement as supplemented.

8 Q. Could you open envelope number 13?

9 A. I have it here. It says Norfolk &
10 Portsmouth Belt Line Railway Company, dated
11 April 18, 2018.

12 MR. WINGFIELD: Let's mark this as
13 Exhibit 15.

14 (Thereupon, the referred-to document was
15 marked for Identification as Exhibit 15.)

16 BY MR. WINGFIELD:

17 Q. Mr. Girardot, earlier you testified that
18 you would want to see the minutes to determine
19 whether or not you agreed that there was no vote on
20 the 2018 rate proposal.

21 And so now that you've been provided
22 access to the board minutes of the April 18, 2018
23 meeting, you would agree there's no evidence in
24 these board minutes that the 2018 rate proposal was
25 voted on by the board?